

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Respondent,

- against -

THOMAS RITTWEGER,

Petitioner.

USDS SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 7/16/09
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02 Cr. 0122 (JGK)

MEMORANDUM OPINION
AND ORDER

The petitioner has moved for a reduction of his sentence pursuant to 18 U.S.C. § 3582(c)(2), arguing that his offense level should be reduced for "Credits Against Loss" pursuant to the United States Sentencing Guidelines § 2B1.1, Application Note 3(E).

The petitioner was sentenced by this Court on June 1, 2005 principally to 135 months of incarceration and ordered to pay restitution of over \$18 million. The petitioner asserts that the language in § 2B1.1, Application Note 3(E) was the result of an amendment that became effective in February 6, 2008, after the date of his sentencing. He argues that he should be resentenced in accordance with Application Note 3(E).

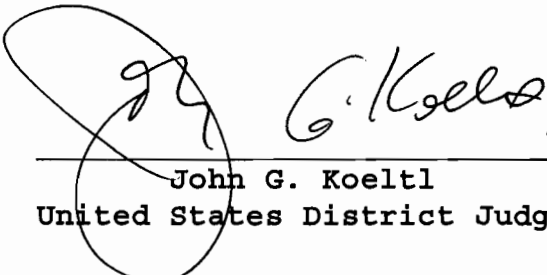
However, the language in Application Note 3(E) was in effect as U.S.S.G. § 2B1.1, Application Note 2(E) before the petitioner was sentenced. See U.S.S.G. § 2B1.1, App. Note 2(E) (Nov. 1, 2001); U.S.S.G. Appendix C, Amend. 617. Application

Note 2(E) was adopted in Amendment 617 and was effective as of November 1, 2001. The language in Application Note 2(E) was redesignated 3(E) as of November 1, 2003, which was still before the date of petitioner's sentencing. See U.S.S.G. Appendix C, Amend. 653. Because the language upon which the petitioner bases his motion for sentencing reduction was in effect prior to the date he was sentenced, he is not eligible for a reduction in sentence pursuant to 18 U.S.C. § 3582(c)(2).

In his reply brief the petitioner agreed to withdraw his motion for a sentencing reduction if the language of Application Note 3(E) was in effect at the time of sentencing. Because the language was in effect before he was sentenced on June 1, 2005, the petitioner's motion is withdrawn. The Terms of the Judgment of Conviction will remain unchanged.

SO ORDERED.

Dated: New York, New York
July 14, 2009



John G. Koeltl
United States District Judge